Again, the defence of impossibility is seen to avail not only where there is an "absolute impossibility," but often, as in the principal case, where it would be unconscionable by reason of "relative impossibility" to enforce the obligation. The very word "impossibility" seems a misnomer. Relief of this kind is more characteristic of the ethical attitude of equity than of the unmoral attitude of law. Moreover, the course of pleading furnishes a clue. If the accepted statement that the promise is conditioned be true, an obligor charged with an absolute promise should plead negatively; but impossibility is always an affirmative defence. This, again, betrays an equitable origin. To look at the principal case from this point of view, the covenant for quiet enjoyment is absolute, and it runs to the railway company as assignee. But it is against conscience to hold the lessors to their legal liability when the breach is authorized by an act of Parliament. The defence is conclusive, but it is not based upon the legal fiction of an implied condition. It is rather an affirmative defence equitable in origin.

THE JURISDICTION OF EQUITY OVER CRIMES. — In view of the state of American decisions on the subject, it may be with bad grace that we can criticise an English case enjoining the commission of a criminal offence. No English court has ever gone to the length of *United States* v. *Debs*, 64 Fed. Rep. 724, in which case at the suit of the United States an injunction was granted and addressed to some persons who had not even been joined as defendants in the suit, restraining them from flagrant breaches of the peace. Yet the final decree of the Court of Appeal in the case of *Lyons* v. *Wilkins*, noted in the Law Times, Dec. 24, 1898, is not free from doubt. The defendants' offence was conspiracy; striking members of a Trade Union picketed the plaintiff's works in order to impede his business. Upon the motion for an interlocutory injunction the chief argument was on the question whether the defendants' acts were criminal under the Property Act, 38 & 39 Vict. c. 86, and the injunction granted was in its wording aimed at the statutory offence. [1896] 1 Ch. 811. Mr. Jenkins, Q. C., suggested that this was not the proper attitude for a court of equity, but his objection left no impress upon the form of the decree. At the hearing of the cause Mr. Justice Byrne does not seem to have been entirely clear upon the matter. 48 L. T. Rep. 618. He delayed his decision until after the decision of the civil action of *Allen* v. *Flood*, [1898] App. Cas. 1, and modified his decree somewhat in accordance with that case; in this he seemed to be regarding only the common-law tort. But he made another alteration in the decree forbidding the defendants from besetting the premises of one of the plaintiff's employees "for any purpose except merely to obtain or communicate information;" this change he made to fit the words to the phrasing of the Property Act, and in making it he must have been thinking solely of the statutory offence. Finally the decree of the Court of Appeals is apparently framed with equal care in conformity with the statute. The result can hardly be thought satisfactory, for in theory the court of equity should not have looked at the statute at all. *Sparhawk* v. *Union Passenger Ry. Co.*, 54 Pa. St. 401. Although equity does not lose jurisdiction over a tort, when that tort happens to be a crime, its jurisdiction is not because of, but in spite of, the criminality of the act. A public nuisance causing special damage, or perhaps a libel, may be enjoined. The reason is that the act, besides

being a crime, is a tort, for which a civil action for damages would lie. No such civil action can lie for breaking a statute, unless the statute itself creates a civil liability, and that was not the fact in the principal case. No more should equity have taken control except for the civil wrong. The statute merely created a right in the public, and only the Attorney-General should take advantage of it, — and that in a criminal proceeding. The business of the court of equity is not the enforcement of the penal code, unless the legislature which created the crime gave the court the power to control it by injunction. Such a course is taken in some of our States, although it puts a severe strain upon the machinery of courts; but the course was not taken by Parliament in the statute in question, and equity should have looked only at the tort. A tort there undoubtedly was; and upon that the injunction should have been based.

RECENT CASES.

AGENCY — INSURANCE POLICIES — WAIVER OF CONDITIONS. — *Held*, that an agent of a life insurance company has power, before delivery, to waive a condition that the policy shall be void unless the first premium is paid during the lifetime of the insured, notwithstanding the policy expressly states that he has no such power. *John Hancock Mut. Life Ins. Co.* v. *Schlink*, 51 N. E. Rep. 795 (Ill.).

The case is in accord with the great weight of authority. It is generally held that a life insurance agent can, before delivery of the policy, waive any of the conditions therein contained, although there is an express statement in the policy that he has no such power, provided, of course, that the insured has no knowledge of this limitation. *Dilleber* v. *Knickerbocker Life Ins. Co.*, 76 N. Y. 567; *Piedmont and Arlington Life Ins. Co.* v. *Young*, 58 Ala. 476. This, however, is merely a question as to the extent of the incidental powers of the agent, and in all cases the jury should decide whether a reasonable man knowing nothing of this express limitation would say it was within the scope of the agent's authority to waive the particular condition. If in such a case, the agent waives or varies the terms of the policy after delivery, contrary to the express stipulations therein contained, the company will not be bound, as the insured will be presumed to know that the agent is not authorized to make such a change. *Quinlan* v. *Providence Washington Ins. Co.*, 133 N. Y. 356.

BANKRUPTCY — VOLUNTARY ASSIGNMENTS VOIDABLE BY TRUSTEE. — A debtor within four months of being adjudged a bankrupt made a voluntary assignment in conformity with the laws of his state. *Held*, that the assignment is voidable by the trustee in bankruptcy. *In re Gutwillig*, 90 Fed. Rep. 475 (Dist. Ct., N. Y.).

In the case of *Mfg. Co.* v. *Hamilton*, 51 N. E. Rep. 539 (Mass.), which was followed in *In re Bruss-Ritter Co.*, 90 Fed. Rep. 651, it was held that state insolvent laws were suspended by the National Bankruptcy Act. But since general assignments are not made under insolvent laws that principle does not determine the present case. However, a result different from the one reached would be subversive of the whole purpose and policy of bankruptcy legislation, since it would permit a debtor to distribute his assets in a manner other than that provided by the Bankruptcy Act. Another conclusive reason given for the decision is that the provision of the Bankruptcy Act, which makes voluntary assignments acts of bankruptcy, would be of no value to creditors, if the assignment were not voidable. A similar decision under the preceding act, and an abundant collection of authorities is to be found in the case of *Globe Ins. Co.* v. *Cleveland Ins. Co.*, 14 B. R. 311.

BILLS AND NOTES — FRAUD BY DRAWER — PAYEE'S LIABILITY TO DRAWEE. — Action brought by the drawee against the payee of a bill of exchange to recover back money paid to the defendant's collecting agent, on the ground of fraud perpetrated by the drawer on the plaintiff. The delivery by the drawer to the payee was for collection only. *Held*, that the defendants must be treated as if they were the actual purchasers of the bill, and although in no way parties to the drawer's fraud, they were liable to the plaintiff for money paid to their agent under a mistake of fact. *Eufaula Grocery Co.* v. *Missouri National Bank*, 24 So. Rep. 390 (Ala.).